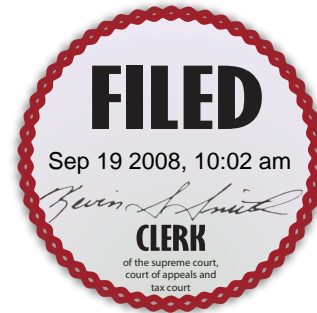


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRYAN G. MOSLEY,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 49A02-0802-CR-188

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APPEAL FROM THE MARION SUPERIOR COURT  
CRIMINAL DIVISION, ROOM 10  
The Honorable Louis F. Rosenberg, Magistrate  
The Honorable Linda E. Brown, Judge  
Cause No. 49F10-0711-CM-242464

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**September 19, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Bryan G. Mosley (Mosley), appeals his conviction for resisting law enforcement, as a Class A misdemeanor, Ind. Code § 35-44-3-3.

We affirm.

## ISSUES

Mosley presents a single issue for our review: Whether the evidence is sufficient to support his conviction.

## FACTS AND PROCEDURAL HISTORY

In the early morning hours of November 14, 2007, Indianapolis Metropolitan Police Officers William Flude (Officer Flude) and Joe Stern (Officer Stern) were called to Bubbaz Bar & Grill at 7526 North Shadeland Avenue in response to a reported disturbance. A bartender apparently wanted Mosley to leave the bar. Officers Flude and Stern approached Mosley and asked him to leave. Mosley responded that he had just ordered a pitcher of beer and that he would not leave until he finished drinking it. Officer Flude continued to ask Mosley to go outside, and, eventually, Mosley did so.

Once Mosley was outside, Officer Flude and the bartender asked him to leave the property and to go back to his apartment, which was across the street. Mosley responded with “belligerent” yelling and profanities. (Transcript p. 10). When the officers again asked him to leave the property and he refused, the officers advised him that he was being placed under arrest for criminal trespass. Officer Flude told Mosley to put his hands behind his back. After Officer Flude handcuffed Mosley’s right wrist, Mosley “started flailing up with

his left hand” in such a way that Officer Flude thought that he was trying to punch Officer Stern. (Tr. p. 12). Mosley then engaged in a “small tussle” with the officers before they were able to get him to the ground. Once Mosley was on the ground, he “started kicking quite a bit.” (Tr. p. 13). The officers had to “put quite a bit of pressure on to his legs” to restrain them. (Tr. p. 13). The officers were eventually able to handcuff Mosley and complete the arrest.

Later the same day, the State filed an Information charging Mosley with Count I, resisting law enforcement, as a Class A misdemeanor, I.C. § 35-44-3-3, and Count II, criminal trespass, as a Class A misdemeanor, I.C. § 35-43-2-2. A bench trial was held on January 29, 2008. The trial court found Mosley guilty of resisting law enforcement but not guilty of criminal trespass and sentenced him to one year in jail with 363 days suspended to probation.

Mosley now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

On appeal, Mosley argues that the evidence is insufficient to support his conviction for resisting law enforcement, as a Class A misdemeanor. Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 213-14 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative

value to support the judgment. *Id.* at 214. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

Under Indiana Code section 35-44-3-3(a)(1), a person who (1) knowingly or intentionally (2) forcibly (3) resists, obstructs, or interferes with a law enforcement officer (4) while the officer is lawfully engaged in the execution of the officer's duties commits resisting law enforcement, a Class A misdemeanor. Mosley asserts that the State failed to prove that he acted "forcibly." We disagree.

Our supreme court has said that, for purposes of Indiana Code section 35-44-3-3(a)(1), force is used when an individual "directs strength, power or violence towards police officers[.]" *Price v. State*, 622 N.E.2d 954, 963 n.14 (Ind. 1993) (citing *Spangler v. State*, 607 N.E.2d 720 (Ind. 1993)), *reh'g denied*. In *J.S. v. State*, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006), *trans. denied*, we held that the "forcibly" element was satisfied where there was evidence that the juvenile respondent "flailed her arms, pulled, jerked, and yanked away from" a school police officer. Likewise, in this case, the State presented evidence that when Mosley was being handcuffed, "he started flailing up with his left hand" and "had a small tussle" with the officers while being taken down to the ground. (Tr. p. 12). Once he was on the ground, he "started kicking quite a bit," and the officers had to "put quite a bit of pressure" on his legs to restrain them. (Tr. p. 13). This evidence regarding Mosley's actions was sufficient to satisfy the "forcibly" element of the resisting law enforcement statute. Therefore, the evidence is sufficient to support Mosley's conviction.

Finally, a few observations regarding Mosley's brief. The core of his half-page argument is as follows:

The use of force is the essential element of resisting law enforcement. *White v. State* 545 N.E.2d. 1124 (Ind. App. 1992) Some resistance by a defendant does not constitute resisting law enforcement. *Ajabu v. State* 704 N.E.2d. 494 (Ind. App. 1998) There must be some form of violent action to evade the police, a person standing his ground does not meet this requirement. *Spangler v. State* 607 N.E.2d. 720 (Ind. 1993)

Mr. Mosley's actions do not meet the requirements of Resisting Law Enforcement.

(Appellant's Br. p. 3). We urge Mosley's public defender to use proper punctuation, proper citation format, and, where appropriate, pinpoint citations. Information on proper citation form can be found in Indiana Appellate Rule 22.

We are more concerned, though, with the substance of the argument. The proposition that "some" resistance by a defendant does not constitute resisting law enforcement is wholly unhelpful without some argument based on the facts of this case. Furthermore, the notion that a person standing his ground does not meet the requirement of some form of violent action is clearly inapplicable in this case. There is no question that Mosley's actions, while they seem to have stopped short of outright, dangerous violence against the police, went beyond merely "standing his ground."

We understand that a criminal defendant has a right to an appeal of his conviction. But that does not mean that an appeal should be filed in every case. When it is clear that the trial court did not commit reversible error, it is a waste of the resources of this court and the attorney general's office and, most of all, public defender funds, for an appeal to nonetheless

be filed. Trying to create issues where there are none leads to the sort of perfunctory, baseless brief we have before us today. When there are no meritorious arguments to be made, the better approach is to file a brief in accordance with our decision in *Packer v. State*, 777 N.E.2d 733 (Ind. Ct. App. 2002), which outlines the proper procedure for such a situation.

### CONCLUSION

Based on the foregoing, we conclude that the evidence is sufficient to support Mosley's conviction for resisting law enforcement, as a Class A misdemeanor.

Affirmed.

BRADFORD, J., concurs.

BAILEY, J., concurs in result.